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**Subject: Letter Report Regarding the California Department of Water Resources
Corridor Management Plan Permitting Strategy**

Dear Messrs. Danna and Nelson:

The following permitting strategy outlines the necessary steps to secure programmatic compliance with federal and state regulations for ongoing maintenance and routine habitat restoration activities associated with the California Department of Water Resources' (DWR's) Corridor Management Plan (CMP) on the Lower Feather River from the Sutter Bypass to the Yuba River. This conceptual permitting strategy outlines the permits that would be required for the CMP, potential mechanisms for obtaining these permits, and approximate permitting timelines.

The CMP would describe a variety of routine maintenance activities, including: vegetation control (e.g., mowing, herbicide application, burning); rodent control and grouting of burrows; removal of vegetation, debris and sediment to maintain flow capacity; bank repairs; and, repair of small areas of damaged levee due to erosion by rain or wave action, boils, seepage, or slumping to maintain levee structural integrity. Additionally, the CMP would potentially discuss maintenance of structures such as gates, barriers, and flap gates as well as routine restoration activities such as minor grading, installation of plants and temporary irrigation systems, seeding of native herbaceous plants, and non-native vegetation removal. These activities would be carried out by DWR, local maintaining agencies, and habitat restoration contractors.

Agencies with regulatory authority over the proposed maintenance and restoration activities include the U.S. Army Corps of Engineers Regulatory Division (USACE), the Central Valley Regional Water Quality Control Board (Central Valley RWQCB), the California Department of Fish and Game (DFG), U.S. Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS), State Historic Preservation Office (SHPO), California State Lands Commission (SLC), and Central Valley Flood Protection Board (CVFPB).

This report summarizes the regulatory mechanisms that could be used by the above agencies to provide programmatic authorizations for the CMP. It compares different approaches to achieving regulatory compliance and is intended to facilitate discussions between DWR and regulatory agencies to determine the most appropriate permitting strategies. These approaches have been developed based on review of existing permit programs and policies for similar permitting efforts as well as discussions with agency representatives.

Please see Appendix A for a list of acronyms and other abbreviations used in this letter.

FEDERAL AUTHORIZATIONS

U.S. Army Corps of Engineers

CLEAN WATER ACT SECTION 404 AND RIVERS AND HARBORS ACT SECTION 10, NATIONAL ENVIRONMENTAL POLICY ACT

Section 404 of the Clean Water Act (CWA) prohibits the discharge of dredged or fill materials into waters of the United States, and section 10 of the Rivers and Harbors Act of 1899 (RHA) prohibits obstruction or alteration of navigable waters of the United States without prior USACE authorization. Two potential programmatic approaches are available for compliance with these statutes. USACE could develop a Regional General Permit (RGP) or Programmatic General Permit (PGP) for the CMP under the authority of section 404 (33 U.S. Code section 1344) and section 10 (33 U.S. Code section 403), in accordance with provisions of "Regulatory Programs of the Corps of Engineers," 33 Code of Federal Regulations (CFR) section 323.2(h) for activities which are substantially similar in nature and which cause only minimal individual and cumulative environmental impacts. RGPs and PGPs are generally valid for five years from the date of issuance and may be renewed at the USACE's discretion.

An RGP is issued by a USACE district or division and authorizes a class of activities within a geographic region that are similar in nature and have minimal individual and cumulative environmental effects. Overall RGPs streamline the USACE permitting process by avoiding the need to obtain separate permits on a project-by-project basis. In order to qualify for authorization under an RGP permit applicants must meet the general and special conditions established for that RGP. Once an RGP is issued, applicants can use the permit if the stated conditions are met. RGPs typically require project-by-project notification to USACE, and USACE issues a notice to proceed if the terms of the RGP are met. RGP processing timelines are difficult to anticipate and are

based on agency coordination and workloads; however, a 1- to 2-year timeframe from pre-application coordination to RGP issuance is a reasonable expectation.

A PGP may be issued by a USACE division where a local, state, or other federal program provides protections for the aquatic environment that are at least equivalent to the protections provided by USACE's Regulatory Program. The PGP is a mechanism available to Federal, tribal, State, and local regulatory authorities (other regulatory authority [ORA]). A PGP provides the written vehicle that identifies the terms, limitations and conditions under which specific projects regulated by an ORA program may be authorized under USACE's Regulatory Program with a more efficient and abbreviated review by USACE. Under a PGP, USACE may delegate parts of their administrative authority to allow the ORA, in this case DWR, to review project-specific PGP notifications and issue notices to proceed. PGPs may thus simplify the evaluation process and facilitate a "one-stop-shopping" permitting approach. RGP processing timelines are difficult to anticipate and are based on agency coordination and workloads; it would be reasonable to anticipate a 2- to 5-year timeframe from pre-application coordination to PGP issuance.

RGP and PGP Pros and Cons for the CMP

- ▶ A RGP may be more easily developed than a PGP. The USACE Sacramento District has not previously issued a PGP and, to our knowledge no PGPs have been issued in California. The Sacramento District is currently working to develop a PGP for Placer County, which may help with the development of additional PGPs by establishing District/Division policies and familiarizing USACE staff with the PGP development process. Because the PGP must be coordinated at the Division level, longer permit processing timeframes are anticipated in comparison to an RGP. Coordination between the ORA and USACE to ensure that adequate aquatic resource protection is provided under the ORA program may also increase PGP processing timeframes. Based on discussion with USACE staff (Dadey, pers. comm., 2011) the establishment of local ordinances or similar local regulatory mechanisms would be required to provide enforceable means for ensuring adequate resource protection under a PGP. The time required to establish local ordinances could substantially delay PGP issuance.
- ▶ A PGP allows for ORA issuance of project-specific authorizations, such that USACE involvement in individual project approvals is limited. Therefore, the evaluation process for both the regulatory agencies and the applicant is simplified and authorization timeframes for individual projects may be lessened.

Compliance with regulations including but not limited to those identified below would be required prior to issuance of the RGP/PGP:

- ▶ federal Endangered Species Act (ESA),
- ▶ National Environmental Policy Act (NEPA),
- ▶ Section 106 of the National Historic Preservation Act (NHPA),

- ▶ Section 401 of the CWA – Note: 401 certification could be provided on a project-by-project basis if the RWQCB does not certify the RGP/PGP,
- ▶ Bald and Golden Eagle Protection Act (BGEPA),
- ▶ Fish and Wildlife Coordination Act (FWCA),
- ▶ Magnuson-Stevens Fishery Conservation and Management Act (MSA) for Essential Fish Habitat,
- ▶ Marine Mammal Protection Act (MMPA), and
- ▶ Migratory Bird Treaty Act (MBTA).

For maintenance and restoration activities regulated under CWA section 404 and/or RHA section 10, USACE would initiate the ESA, MSA, and NHPA consultations, and initiate coordination under the MMPA and MBTA as part of the RGP/PGP permit process. Compliance with the ESA would be achieved through section 7 consultations requested by USACE with USFWS and NMFS; compliance with the FWCA could be achieved by preparation of a FWCA report by USFWS; compliance with the MSA could be achieved through incorporation of RGP/PGP special conditions requiring implementation of Essential Fish Habitat conservation recommendations provided in the NMFS programmatic BO; compliance with the MMPA, MBTA and BGEPA could be achieved through coordination with NMFS and USFWS during the consultation and coordination process.

It should be noted that some of the maintenance and restoration activities proposed for the CMP may not fall within USACE's regulatory authority under section 404 of the CWA. However, the lower Feather River is considered a Navigable Water of the United States and, therefore, is subject to regulation under section 10 of the RHA, in addition to CWA section 404. Under RHA section 10, a broader range of activities are regulated than under CWA section 404. Under section 404, only those activities that would result in a discharge of dredged or fill material are regulated. RHA section 10 requires USACE authorization for any work or placement of structures in or over navigable waters of the United States. RHA section 10 also requires USACE notification for any structures or work outside the limits defined for navigable waters of the United States if the structure or work affects the course, location, or condition of the water body below. Therefore, it could be asserted that maintenance activities such as vegetation management above the ordinary high-water mark, which would ordinarily not be subject to USACE jurisdiction under CWA section 404, would affect the condition (e.g., aquatic resource functions) of the water body below. If all proposed CMP maintenance and restoration activities above the ordinary high-water mark were considered by USACE to potentially affect the condition of the adjacent navigable waterway, these activities may be subject to regulation under RHA section 10.

If the USACE declined to assert jurisdiction over all CMP activities under either CWA section 404 or RHA section 10 and a "take" permit is required, ESA compliance for the CMP would likely require preparation of a Habitat Conservation Plan (HCP) pursuant to

section 10 of the ESA unless USACE is willing to expand their scope of analysis under section 7 to include activities not regulated under CWA section 7 or RHA section 10. The ESA section 10 and section 7 processes are addressed in detail under the discussion of USFWS and NMFS authorizations below.

Compliance with the NEPA could be achieved by USACE through preparation of an environmental assessment as part of the RGP/PGP process. A finding of no significant impact would be anticipated. If through the environmental assessment USACE determines the project may result in significant environmental effects, preparation of an environmental impact statement would be required for NEPA compliance.

USACE Mitigation Requirements

DWR has emphasized a desire for development of a compensatory mitigation strategy for the CMP that would avoid the need for project-by-project accounting of mitigation ratios. Reference is made to the biological opinion (BO) issued by USFWS for the Yolo Basin Wetlands Project (USFWS 2005), which states that “[t]he Yolo Basin Wetlands Project is designed to be beneficial in nature by increasing habitat for wildlife and does not proposed to mitigate for specific habitat losses.” DWR has requested a similar approach to compensatory mitigation for the CMP.

USACE’s April 10, 2008 “Final Mitigation Rule” (33 CFR Parts 325 and 332) established regulations governing compensatory mitigation for activities authorized by USACE permits. The mitigation rule regulations outline performance standards and criteria for the use of permittee-responsible compensatory mitigation, mitigation banks, and in-lieu free programs. The mitigation rule provisions established a “level playing field” for mitigation proponents by holding permittee-responsible and in-lieu fee mitigation to equivalent standards with mitigation banks. Additionally, the provisions help ensure the success and long-term viability of all compensatory mitigation efforts. The mitigation rule emphasizes a watershed approach in selecting compensatory mitigation project locations, requires measureable, enforceable ecological performance standards and regular monitoring and specifies the components of a complete compensatory mitigation plan, including financial assurances and assurances for long-term protection of mitigation sites (e.g., conservation easements). USACE Sacramento District’s regulatory staff has demonstrated flexibility and fairness in interpreting and applying the mitigation rule requirements, and have indicated their support of programs such as DWR’s CMP, Small Erosion Repair Program, and Cherokee Canal maintenance program, which incorporate and facilitate the enhancement of aquatic resource functions on a watershed scale.

However, based on discussions with USACE staff (Grudzinski, pers. comm., 2011), it is unclear whether there is a mechanism within the USACE’s regulatory program that would allow for mitigation to be evaluated on a cumulative basis for projects like the CMP where restoration activities at one location could provide compensatory mitigation for maintenance activities at another location without some type of formal, project-by-project accounting of mitigation “debits” versus “credits.” USACE indicated that it will

confer with management on this approach for the CMP to determine whether such a mechanism exists.

A potential compensatory mitigation option for the CMP would be to establish an umbrella banking instrument for several potential mitigation sites within the CMP boundaries. Under this scenario, DWR would develop and implement a single-user (or other identified user) wetland mitigation banking system (WMBS) within the CMP operational service area. Potential restoration sites would be listed as mitigation bank sites to be implemented and managed under the WMBS. There are no statutory timelines for mitigation bank establishment, but it would be reasonable to expect that the timeframe for USACE processing of the required mitigation banking materials (e.g., prospectus, banking instrument, financial assurances, drainage/conservation easements) would not be as critical as DWR's preparation and submittal of those materials. With timely submittal of the required materials establishment of a WMBS for the CMP could be reasonably expected within 1–1 1/2 years.

U.S. Fish and Wildlife Service and National Marine Fisheries Service

ESA, FWCA, MSA, MMPA, MBTA AND BGEPA

Once a fish or wildlife species is listed as endangered or threatened under the ESA, the act prohibits anyone from taking the species. To “take” a species means to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct”. Habitat modification or degradation that is likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat constitutes take. USFWS administers the ESA for terrestrial and freshwater species, and NMFS administers the ESA for marine species and anadromous fish species. Section 7(a)(2) of the ESA requires federal agencies to consult with the USFWS and/or NMFS to ensure that they are not undertaking, funding, permitting, or authorizing actions that will likely affect such species or that may result in takes.

As part of the issuance of an RGP/PGP, which would constitute a Federal nexus for at least a portion of the project, the USACE would initiate section 7 consultation with both USFWS and NMFS. Based on similar project authorizations, it is anticipated for the proposed project that the consultation effort would result in a programmatic BO or a combined programmatic BO and not likely to adversely affect letter from each of these agencies. The NMFS programmatic BO would incorporate conservation recommendations for Essential Fish Habitat to comply with the MSA.

Coordination with the USFWS and NMFS would include the discussion of potential impacts to any species covered by the MMPA and the MTBA. The FWCA provides the basic authority for the USFWS's involvement in evaluating impacts to fish and wildlife from proposed water resource development projects; thus, the USFWS would likely provide their comments in the form of a FWCA report. NMFS would likely provide their comments in a letter in response to USACE's request for initiation of section 7 consultation. The concerns and/or recommendations of either agency must be addressed. The USFWS and NMFS section 7 authorizations would likely be valid for a

period of five years, i.e., for the duration of the RGP/PGP. At USACE's request, the USFWS and NMFS could review the project for reauthorization in five years, concurrent with a proposed renewal of the RGP/PGP.

As indicated above, if it is determined that any of the CMP activities are not within the USACE's RGP/PGP scope of analysis, ESA compliance may need to be achieved through preparation of a HCP pursuant to section 10 of the ESA unless USACE is willing to expand their scope of analysis under section 7 to include activities not regulated under CWA section 404 or RHA section 10. USACE is generally wary of increasing their ESA scope of analysis to include activities or areas outside their jurisdiction due to potential enforcement implications. Such decisions may also set an undesirable precedent, leading to requests for similar actions by future permit applicants. However, it may be possible for USACE and USFWS to formally establish enforcement terms and other provisions in a memorandum of understanding (MOU) or memorandum of agreement (MOA). An MOU or MOA could be written to satisfy USACE concerns related to expansion of ESA section 7 coverage while allowing for flexibility in the scope of analysis for the section 7 consultation in recognition of the watershed benefits associated with the CMP.

The HCP development and permit processing phases do not have statutory timeframes but can be roughly estimated as taking 1–5 years in the Sacramento region. Based on discussions with USFWS staff (Hobbs, pers. comms., 2010, 2011), it is not inconceivable that the CMP could qualify for a 'low effect' HCP. However, USFWS staff emphasized that low effect projects are categorically excluded from NEPA, and questioned whether this may require that the projects also be exempt from California Environmental Quality Act (CEQA). To enable the formal screening process for a low effect HCP, DWR would need to provide a list of proposed CMP maintenance and restoration activities to USFWS and NMFS.

The determination of whether an HCP qualifies for the low effect category must be based on its anticipated impacts prior to implementation of mitigation. Low effect HCPs are those involving: (1) minor or negligible effects on federally listed, proposed, or candidate species and their habitats covered under the HCP; and (2) minor or negligible effects on other environmental values or resources. "Low-effect" incidental take permits are those permits that, despite their authorization of some small level of incidental take, individually and cumulatively have a minor or negligible effect on the species covered in the HCP. A timeline for low-effect HCPs is difficult to estimate but is expected to require less time for HCP development and permit processing relative to a standard HCP. USFWS staff indicated they are supportive of the CMP approach and would attempt to facilitate timely HCP development for this effort as their workload allows. USFWS staff (Hobbs, pers. comm., 2011) mentioned the possibility of adding the CMP onto the HCP/NCCP currently being developed in Yuba/Sutter Counties, but pointed out that there could be timing issues with this approach as delays in the overall HCP development would result in delays for CMP authorization and implementation.

Section 7 and HCP Pros and Cons for the CMP

- ▶ Section 7 consultations have statutory timeframes of approximately 120 days and can therefore be completed much more quickly than HCPs. However, without a federal nexus that includes the entire range of proposed maintenance and restoration activities, complete ESA coverage for the CMP may not be achievable through a section 7 consultation unless USACE is willing to expand their scope of analysis to include non-regulated activities such as mowing and excavation of accumulated sediments above the ordinary high water mark.
- ▶ If avoidance and minimization measures are not adequate to reduce effects and a take permit is required under section 10 of ESA, a low effect HCP would be the preferred approach. HCP's can be labor intensive and time consuming. Because there are no statutory timelines, processing of even low-effect HCPs can take multiple years to complete. However, once established, an HCP can provide an avenue for preparation of a single conservation/mitigation approach that addresses both listed species and waters of the United States. Because the primary species covered in the HCP would be expected to use riparian areas, adjacent waters and wetlands as habitat, mitigation provisions outlined in the HCP for these species and their habitats could be coordinated with USACE to also address mitigation requirements for impacts to waters of the United States.

USE OF MOUs FOR ESA COMPLIANCE

Previously established MOUs and associated BO for the Yolo Basin Wetlands Project, the Sacramento River National Wildlife Refuge and the Sacramento River and Feather River Wildlife Areas, and the O'Connor Lakes Unit Riparian Restoration Project within the Feather River Wildlife Area (DFG et al. 1994, USFWS and DFG 2004, DFG and DWR 2006, USFWS 2005) have served as effective means of formally documenting interagency agreements to mutually manage, restore and enhance wetlands and other lands where such lands contain facilities that are maintained for flood protection purposes and also managed for fish, wildlife and plants. These MOUs confirm the agencies' commitment to approach authorization strategies for ongoing flood facilities maintenance in a collaborative manner that both ensures adequate protection for sensitive aquatic resources and listed species and minimizes flood-related risks to public safety. Specifically, these MOUs clarify the agencies' understanding, agreements, representations and commitments to resolving land management issues in areas where their maintenance and management responsibilities overlap. It is anticipated that the agencies will continue to collaborate to develop similar management and authorization strategies through establishment of MOUs, programmatic authorizations and other available regulatory mechanisms.

The "MOU between USFWS regarding the Sacramento River National Wildlife Refuge and DFG regarding the Sacramento River Wildlife Area and Feather River Wildlife Area and State Parks Northern Buttes District regarding the Sacramento River State Parks" (USFWS and DFG 2004) provided a creative mechanism for obtaining a section 7 nexus for ESA compliance for otherwise non-federal activities. USFWS conducted an

internal section 7 consultation whereby a USFWS Refuge conducted a section 7 consultation on behalf of the MOU signatories. Based on input by USFWS staff at recent CMP meetings, there are legal implications with internal section 7 consultations that have resulted in USFWS no longer supporting this option. As discussed above, it may be possible for USACE and USFWS to formally establish enforcement terms and other provisions in a MOU or MOA that would satisfy USACE's concerns related to expansion of ESA section 7 coverage for the CMP. At recent CMP meetings USACE staff indicated they will confer with their management on the feasibility of this mechanism.

The table below summarizes the pros and cons of the potential mechanisms for federal ESA compliance for the CMP. It is important to note that the table does not provide an exhaustive list of all pros and cons associated with each of the potential compliance mechanisms presented. The pros and cons provided in the table are intended simply for purposes of comparison of the ESA compliance mechanisms presented.

The USACE 404/10 and USFWS/NMFS ESA authorizations constitute the critical path authorizations for the CMP. The USACE 404/10 and USFWS/NMFS ESA processes would best be accomplished in parallel and, based on AECOM's experience, the preferred approach would be through a section 7 consultation rather than section 10 consultation.

Under the provisions of the ESA, the threshold requiring consultation with USFWS is lower for section 7 than for section 10. Under section 7, federal agencies are required to consult with USFWS if project activities 'may affect' a listed species, whereas under section 10, non-federal entities are required to obtain incidental take authorization if project activities would result in 'take' of a listed species or adverse modification of designated critical habitat. AECOM recommends DWR incorporate avoidance and minimization measures into the project to assist in avoiding the need for a take permit under section 10 of ESA. AECOM further recommends that DWR provide a description of the proposed maintenance and restoration activities and avoidance and minimization measures to USACE, USFWS and NMFS for their review prior to the scheduled March 9, 2011 meeting to allow their staff and management to evaluate the project information and provide recommendations regarding the appropriate 404/10, ESA authorization, and compensatory mitigation approaches.

Table 1
Pros and Cons of Potential Federal ESA Compliance Mechanism

Potential ESA Compliance Mechanisms	Pros	Cons	Timeframe *
Section 7 Consultation	<p>Statutory timeline exists</p> <p>USACE conducts consultation</p> <p>Biological Assessment preparation typically less cumbersome than HCP preparation</p>	<p>Requires federal nexus (e.g., 404 permit)</p> <p>Some CMP activities may not be covered and may require HCP</p>	<p>Statutory timeframe: 120 days from initiation of consultation</p>
HCP	<p>Provides full coverage for CMP3</p> <p>May allow for integration of water of the United States mitigation</p>	<p>No statutory timeline</p> <p>High level of effort required for HCP preparation/authorization (requires development of an Implementation Agreement, NEPA compliance, etc.)</p>	<p>Estimate: 1–5 yrs.</p>
Low Effect HCP	<p>Possibly less processing time involved than standard HCP</p> <p>Less cumbersome application process than standard HCP</p>	<p>No statutory timeline</p> <p>Project must be categorically excluded under NEPA, which may require CEQA exemption</p>	<p>Estimate: 1–2 years</p>
Combined section 7 Consultation/HCP	<p>Provides full ESA coverage for CMP</p>	<p>No statutory timeline for HCP</p> <p>Would require preparation of BA and HCP; involves coordination with two branches of USFWS</p>	<p>Estimate: 1–5 years assuming standard HCP</p>
Modify existing “2004 MOU” to include CMP	<p>Provides nexus for section 7 Consultation</p> <p>Potentially less time-consuming than HCP</p>	<p>Requires FWS to agree to provide federal nexus via internal section 7 consultation</p> <p>Would require amendment to 2005 BO, which would require preparation of a BA</p>	<p>Rough estimate 9 mos. (does not include BO amendment)</p> <p>BO amendment: 120 days from initiation of consultation</p>
Establish new MOU to provide nexus for section 7 Consultation	<p>Provides nexus for section 7 Consultation</p> <p>Potentially less time-consuming than HCP</p>	<p>Requires FWS to agree to provide federal nexus via internal section 7 consultation</p>	<p>Rough estimate 1 yr. (does not include section 7 consultation)</p> <p>Section 7 consultation: 120 days from initiation of consultation</p>

Table 1 Pros and Cons of Potential Federal ESA Compliance Mechanism			
Potential ESA Compliance Mechanisms	Pros	Cons	Timeframe *
<p>This table does not provide an exhaustive list of all pros and cons associated with each of the potential compliance mechanisms presented. The pros and cons provided in the table are intended simply for purposes of comparison of the ESA compliance mechanisms presented.</p> <p>* The timeframe estimates included in this table are rough timelines provided simply for purposes of comparison of the potential timeframes involved in the potential ESA compliance mechanisms presented. Timeframes can vary substantially based on agency workloads and staffing abilities, as well as DWR's ability to prepare and coordinate review of required supporting documents.</p>			

STATE AUTHORIZATIONS

California Environmental Quality Act

A certified CEQA document will be required for issuance of section 401 water quality certification by the RWQCB or State Water Resources Control Board (SWRCB), streambed alteration agreement (SAA) by the DFG, Master Lease from the State Lands Commission, and National Pollutant Discharge Elimination System (NPDES) permit or waiver from the RWQCB. It is anticipated that either a mitigated negative declaration (MND) or programmatic environmental impact report (PEIR) would be an appropriate CEQA document for the CMP. Achieving CEQA compliance through a MND may be more limiting than a PEIR in that some of the proposed maintenance activities may not 'fit' under a MND but may be adequately addressed under a PEIR.

As the designated lead agency, DWR would identify and prepare the appropriate CEQA document that would identify the scope of the project and probable environmental impacts associated with proposed maintenance and habitat restoration activities, as well as the aggregate and cumulative impact of the project to the extent that these impacts can be defined and are not speculative. In addition to providing CEQA coverage for 401 certification, streambed alteration agreement, Master Lease, and NPDES permit, issuance the CEQA document would provide an avenue for integration of management of cultural resources required for section 106 of the NHPA and would address potential program-level impacts to state-listed species, water quality, and lands within the SLC's jurisdiction.

In general, a MND can be completed in 4–9 months depending on the complexity of the project and the timing of finalization of the project description. The anticipated timeframe for preparation of a MND for the CMP is approximately 9 months; completion of a PEIR for the CMP is anticipated to take 12–18 months; these timeframes may vary substantially based on numerous factors such as agency workload and coordination requirements.

State Historic Preservation Officer**NATIONAL HISTORIC PRESERVATION ACT SECTION 106**

Section 106 of the NHPA requires federal agencies to take into account the effects of their undertakings on historic properties, and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment. The USACE must comply with section 106 of the NHPA for issuance of an RGP/PGP, as this federal action constitutes an undertaking within the meaning of the implementing regulations for section 106 (Title 36, CFR Part 800.16[y]). For the proposed project, the USACE and SHPO could execute a programmatic agreement (PA) using the process defined in 36 CFR Part 800.14 to satisfy compliance with section 106. This process allows deferred identification and management of cultural resources under an agreement document (36 CFR Part 800.4[b][2]). Upon execution (signing and approval) of the programmatic agreement by the consulting parties, section 106 is deemed complete for the purpose of permits and authorizations dependent on the section 106 process (36 CFR Part 800.14[b][2][iii]). Therefore, execution of the programmatic agreement satisfies section 106 sufficiently to allow USACE to issue an RGP/PGP for the project and allow DWR and USACE to defer identification and management of historic properties until specific sites require maintenance or habitat restoration.

The programmatic agreement would provide a process for performing an inventory of cultural resources within maintenance and restoration sites as they are identified, evaluating those resources, and resolving adverse effects on significant resources (historic properties). Notice is required to other potential consulting parties such as the interested public (local historic preservation organizations) and Native American tribes. The USACE would provide notice by letter identifying the nature of the federal action and inviting these parties to consult in development of the programmatic agreement. Coordination with other federal agencies providing permits and authorizations for the project would be performed to ensure that the programmatic agreement identifies these other undertakings, providing a unified compliance framework for section 106 for the project. The programmatic agreement would be valid for five years and could be renewed at the discretion of the USACE and SHPO concurrent with renewal of the RGP/PGP.

Timeframes for PA development vary depending on the level of tribal and agency coordination required. Based on timeframes for PA development for other projects in the region, development and execution of a PA for the CMP would be anticipated to be completed in 3–12 months. However, this timeframe may vary substantially based on numerous factors such as agency workload and coordination requirements.

Central Valley Regional Water Quality Control Board**CLEAN WATER ACT SECTION 401**

Applicants seeking a federal permit under section 404 of the Clean Water Act must also obtain Water Quality Certification from the RWQCB in accordance with section 401 of

the Clean Water Act. In California, the U.S. Environmental Protection Agency (EPA) has delegated authority to the Regional Water Quality Control Boards to issue 401 certifications. Section 401 certification of the RGP/PGP would provide another level of streamlining to the CMP. However, if the RGP/PGP is not certified under section 401, each maintenance and restoration project carried out under the RGP/PGP would require separate section 401 certification prior to initiation of project activities.

The RWQCB could develop a 401 water quality certification to authorize the CMP under section 401 of the CWA in tandem with the USACE's RGP/PGP. Issuance of the 401 water quality certification would require completion of the final CEQA document. The RWQCB or SWRCB would be a responsible agency under CEQA. In acting on issuance of the 401 certification, the RWQCB or SWRCB would rely on the CEQA document to prepare and issue its own findings regarding the project, and to decide whether or not to issue a water quality certification. A Draft 401 Certification would be circulated for 30 to 60 days for public review and comment. An additional 60 days may be required to schedule a Board meeting if necessary. The 401 Certification would likely be effective for five years and may be renewed at the RWQCB or SWRCB's discretion concurrent with renewal of the RGP/PGP.

Timeframes for 401 certification vary but would be anticipated to coincide with the associated USACE RGP/PGP processing timelines.

CLEAN WATER ACT SECTION 402

Section 402 of the CWA prohibits certain discharges of stormwater containing pollutants except in compliance with a NPDES permit (Title 33 U.S. Code sections 1311 and 1342(p); also referred to as CWA sections 301 and 402(p)). The CWA authorized EPA to delegate NPDES Permit Program authority to state governments, enabling states to perform many of the permitting, administrative, and enforcement aspects of the NPDES Program. In California, the state RWQCB has been authorized to implement the NPDES program, with EPA retaining oversight responsibilities.

Under California's NPDES program, projects that disturb one or more acres of soil or projects that disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the State's general permit for discharges of storm water associated with construction activity (State Water Resources Control Board Order No. 2009-0009-DWQ NPDES General Permit No. CAS000002, *Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction and Land Disturbance Activities*). Construction activity subject to this "Construction General Permit" includes clearing, grading and disturbances to the ground such as stockpiling, or excavation.

The Construction General Permit requires the development and implementation of a Storm Water Pollution Prevention Plan (SWPPP). The General Permit describes the elements that must be contained in a SWPPP as including (1) a site map(s) showing the construction site perimeter, existing and proposed buildings, lots, roadways, storm water collection and discharge points, general topography both before and after

construction, and drainage patterns across the project; (2) a list of best management practices (BMPs) that will be used to protect storm water runoff and the placement of those BMPs; (3) a visual monitoring program, a chemical monitoring program for “non-visible” pollutants to be implemented if there is a failure of BMPs; and (4) a sediment monitoring plan if the site discharges directly to a water body listed on the 303(d) list for sediment.

If construction site compliance is not covered under a 401 water quality certification a NPDES 402 permit is required. Based on requirements associated with the Construction General Permit and discussions with the Region 5 RWQCB (Raley, pers. comm., 2010; Muhl, pers. comm., 2010), if grading for a routine maintenance or restoration project was over 1 acre, filing a Notice of Intent (NOI) under the construction general permit would be required. To streamline the Construction General Permit authorization process for CMP routine maintenance and restoration projects, RWQCB staff suggested they would consider approval of a ‘generic’ SWPPP for the corridor management plan. Under this strategy, DWR would develop a generic SWPPP with standardized BMPs for all routine maintenance and restoration projects. A draft version of the SWPPP would be submitted to the RWQCB for comment. Once RWQCB determined the generic document met the SWPPP requirements, the generic SWPPP could be submitted on a project-by project basis with a project-specific NOI and check for the required NPDES permit filing fee. The RWQCB indicated they generally would be able to turn around a Notice of Applicability to use the General Construction Permit in such cases in approximately 10 days from receipt of the NOI.

California Water Code, Section 13267

California Department of Fish and Game

LAKE AND STREAMBED ALTERATION PROGRAM

Section 1600 of the California Fish and Game Code requires notification to DFG before conducting activities that will substantially obstruct or divert natural flow of state waters, substantially change or use materials from a bed, bank or channel, or deposit materials into a river, stream or lake. Based on discussion with DFG staff (Barker, pers. comm., 2011) potential mechanisms for authorizing DWR’s proposed CMP activities under section 1600 include development of a Master SAA, a Long-term SAA, a Routine Maintenance Agreement, or a programmatic agreement in the form of a MOU between DFG and DWR.

DFG’s past approach to authorization for DWR maintenance efforts in the lower Feather River include a 2003 MOU for routine maintenance activities (DFG and DWR 2003) and a Routine Maintenance Agreement (RMA) that became effective on January 6, 2011 (DFG 2011). The current RMA outlines a process that allows DFG to annually review DWR’ maintenance work on flood control projects to ensure that the work does not

adversely affect fish and wildlife resources, and satisfies the requirements of California Fish and Game Code Section 1602.

DWR has expressed a desire to utilize the existing RMA to authorize the maintenance and restoration activities proposed under the CMP. Based on discussion with DFG staff (Barker, pers. comm., 2011), use of the existing RMA would require an amendment to (1) incorporate any CMP activities outside the existing RMA coverage area, (2) to incorporate provisions pertaining to CEQA compliance (the existing RMA is for CEQA exempt projects) and (3) to incorporate local maintaining agencies and other non-DWR users. DFG staff suggested that development of a Programmatic Streambed Alteration Agreement (PSAA) would be the preferred route. Although there are no provisions in the Fish and Game code for PSAAs, DFG Region 2 has used this mechanism for similar programmatic authorization efforts. Under the PSAA approach, section 1602 compliance could be achieved through development of a MOU using the current RMA as a template. The benefit of a programmatic as compared to other types of SAAs is that PSAAs can be structured to allow DFG to delegate the authority to issue project-by-project notices to proceed to DWR. This would allow a streamlined permitting approach for use by local maintaining agencies and other CMP partners, whereby these other users would “apply” to DWR, rather than DFG for authorization to conduct CMP work under the PSAA.

Execution of the PSAA would require certification of CEQA compliance. DFG would be a responsible agency for CEQA compliance. In acting on issuance of the PSAA, DFG would rely on the CEQA document to prepare and issue its own findings regarding the project, and to decide whether or not to issue a PSAA. As under the current RMA, the PSAA could be made effective until terminated in writing by either signatory party.

The timeline for execution of a PSAA using the existing RMA as a template is difficult to anticipate but can be roughly estimated to take approximately 12–18 months depending on DFG and DWR workloads.

CALIFORNIA ENDANGERED SPECIES ACT

The California Endangered Species Act (CESA) prohibits activities that will result in “take” of state-listed and candidate species without prior DFG authorization through an Incidental Take Permit. Section 86 of the California Fish and Game Code defines take as the act or attempt to “hunt, pursue, catch, capture, or kill.” There is no provision for programmatic incidental take authorization under CESA. The current RMA (DFG 2011) incorporates timing restrictions intended to avoid adverse impacts to species that are fully protected or listed as threatened or endangered under CESA. The RMA also stipulates that DFG may impose additional measures on the maintenance work covered under the RMA if DFG determines such conditions are necessary to protect a fully protected or listed species from harm. DFG has thus ensured through provisions in the RMA that with implementation of recommended conservation measures such as appropriate project timing and other avoidance measures, take (as defined under CESA) of state-listed species would be avoided. On this premise, the MND or PEIR prepared pursuant to CEQA could address potential impacts to all state-listed species

with potential for occurrence within the project area, and would include avoidance and other conservation measures to avoid and/or minimize project-related effects to state-listed and candidate species thus avoiding the need for a take permit from DFG. If during project implementation DFG determined that a particular maintenance or restoration activity could result in take under the state definition, that project would no longer qualify for authorization under the RMA. In such cases, DFG would be consulted on an individual project basis and a California Fish and Game Code section 2081 Incidental Take Permit for the individual maintenance or restoration activity would be pursued.

Central Valley Flood Protection Board

Division 1 of Title 23 of the California Code of Regulations contains regulations promulgated by CVFPB to carry out their duties under Water Code sections 8534, 8608 and 8710-8723. Under these statutes, CVFPB is required to enforce appropriate standards for the construction, maintenance, and protection of adopted flood control plans that will best protect the public from floods.

Under Title 23, every proposal or plan of work, including placement of fill, embankment, encroachment or works of any kind, and including but not limited to the planting, excavation, or removal of vegetation, and any repair or maintenance that involves cutting into the levee, wholly or in part within any area for which there is an adopted plan of flood control, must be approved by CVFPB prior to commencement of work. Permits are not required for maintenance activities as defined in article 2, section 4 of Title 23. Under article 2, "Maintenance activities" means any work required to retain or maintain the intended functions of flood control facilities and of existing encroachments. Under this definition, maintenance activities include but are not limited to mowing, tree and brush trimming and removal, revetment restoration, rodent control, spraying, painting, coating, patching, burning and similar work, but do not include any significant excavation or any excavation during the flood season. The Executive Officer of CVFPB may waive the requirement for an encroachment permit for minor alterations within an adopted plan of flood control that would not be injurious to the adopted plan of flood control.

CMP activities that qualify as operations and maintenance (O&M) carried out in accordance with a facilities' O&M Manual would be exempt from CVFPB encroachment permit requirements. Restoration and other activities beyond the scope of the O&M Manual for which encroachment permit requirements are not waived would require issuance of an encroachment permit. Based on discussions with CVFPB staff (Herota, pers. comm., 2010), it would be possible for the CVFPB to consider a programmatic approach to encroachment permitting similar to that used for the SAFCA Natomas Levee Improvement Project.

Based on this approach, DWR could apply for an encroachment permit for the first year of the CMP, providing the program scope of work, the CEQA document and any other environmental documents, and the CVFPB could issue a single permit for that year. The subsequent year DWR would need to reapply for a permit for the new sites, but the

CVFPB would have the CEQA document and scope of work on file and would add a hyphenated number to track the second year of the program. This same process could be used each year.

California State Lands Commission

The SLC has jurisdiction and management control over certain public lands of the State that were received by the State from the United States. When California became a state in 1850, it acquired approximately four million acres of land underlying the State's navigable and tidal waterways. Known as sovereign lands, these lands include the beds of California's navigable rivers, lakes and streams, as well as the state's tide and submerged lands along the State's more than 1,100 miles of coastline and offshore islands from the mean high tide line to three nautical miles offshore.

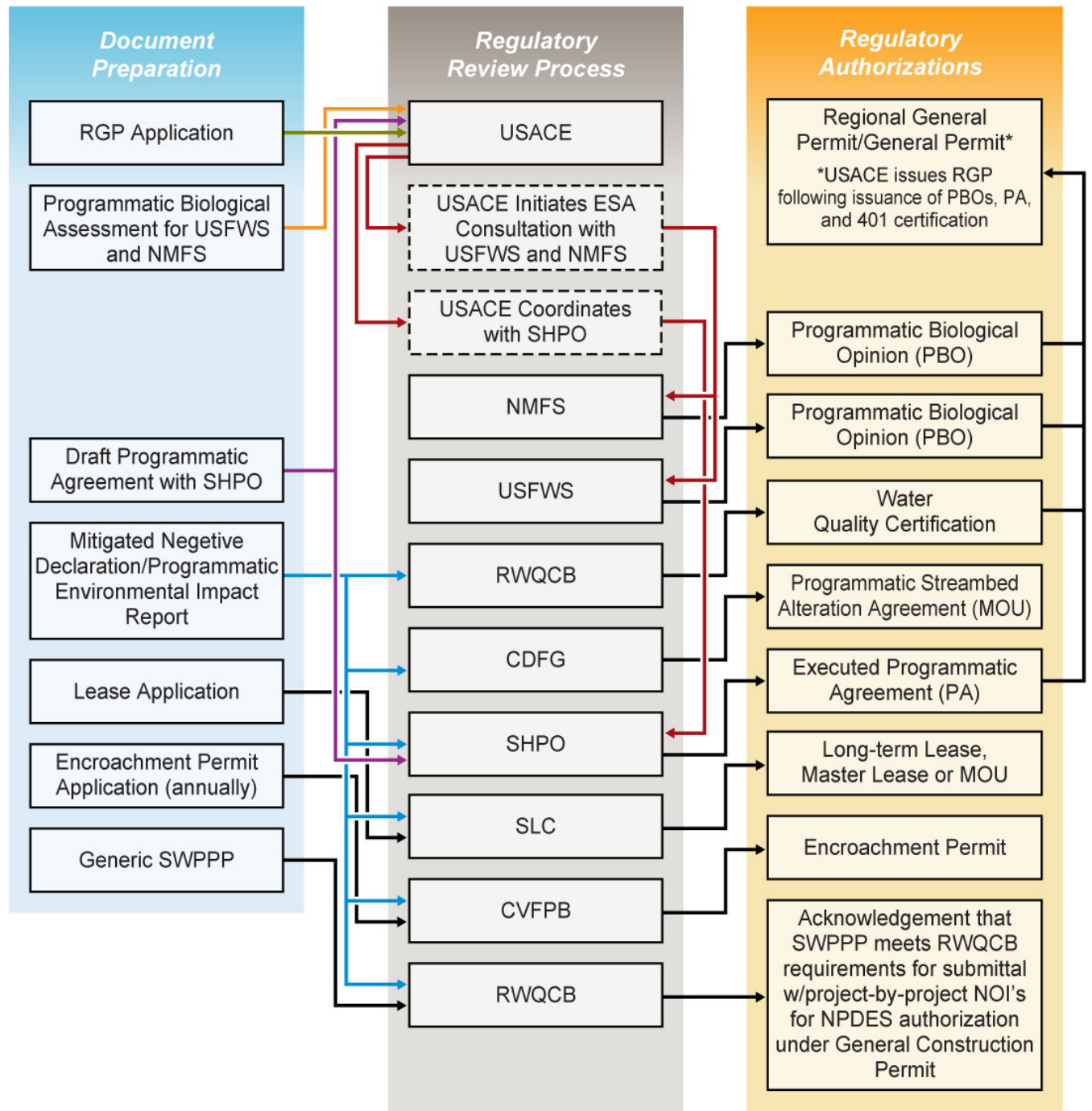
The issuance by the SLC of any lease, permit or other entitlement for use of State lands is reviewed for compliance with the provisions of CEQA. Additionally, if the application involves lands found to contain "Significant Environmental Values" within the meaning of Public Resources Code section 6370 et seq., consistency of the proposed use with the identified values must also be determined through the CEQA review process. Pursuant to its regulations, the SLC may not issue a lease for use of "Significant Lands" if such proposed use is detrimental to the identified values.

The limit of SLC jurisdiction on the Feather River would be the low water mark in the bed of the historic river. The SLC would need to review the project area to determine the boundaries of lands subject to SLC lease requirements within the corridor management plan project area. Based on conversations with SLC staff (Hays, pers. comm., 2010), mechanisms available to streamline SLC lease requirements for the corridor management plan include development of a maintenance MOU or development of a long-term lease or master lease. SLC staff indicated there is an existing master lease with DWR for levee maintenance, and suggested that the existing lease may be expandable to include the proposed routine maintenance and restoration activities. The lease application process generally takes 3–6 months, and an approved CEQA document is required prior to lease issuance.

RECOMMENDED PERMITTING STRATEGY FOR THE CMP

Based on our knowledge and experience with the standard and programmatic permitting efforts and associated agency coordination requirements described above, AECOM recommends that DWR pursue the permitting approach outlined in the flowchart below. The flowchart outlines the recommended interagency authorization processes and coordination sequences to achieve programmatic authorization. This flowchart is a graphic representation and does not include all of the documents that would be required for complete permit application packages.

Recommended Permitting Strategy



Other authorizations that may be required:

- Water Rights Permits from SWRCB
- SMARA Permits from Local Counties
- Clean Water Act 408/208.10 Authorization from USACE (Construction Operations Division)-Requires NEPA Compliance
- Real Estate Acquisitions

USACE – U.S. Army Corps of Engineers

USFWS – U.S. Fish & Wildlife Service

RWQCB – Regional Water Quality Control Board

SWPPP – Stormwater Pollution Prevention Plan

NPDES – National Pollutant Discharge Elimination System

NMFS – National Marine Fisheries Service

CVFPB – Central Valley Flood Protection Board

SHPO – State Historic Preservation Office

SMARA – State Mining and Reclamation Act

SLC – State Lands Commission

CDFG – California Dept of Fish & Game

NOI – Notice of Intent

If you have any questions or require further information please feel free to contact me at (916) 414-1605.

Sincerely,



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USFWS and DFG. See U.S. Fish and Wildlife Service and California Department of Fish and Game.

**APPENDIX A
ACRONYMS AND OTHER ABBREVIATIONS**

BGEPA	Bald and Golden Eagle Protection Act
BMP	best management practice
BO	biological opinion
CEQA	California Environmental Quality Act
CESA	California Endangered Species Act
CFR	Code of Federal Regulations
CMP	Corridor Management Plan
CVFPB	Central Valley Flood Protection Board
CWA	Clean Water Act
DFG	California Department of Fish and Game
DWR	California Department of Water Resources
EPA	U.S. Environmental Protection Agency
ESA	federal Endangered Species Act
FWCA	Fish and Wildlife Coordination Act
HCP	Habitat Conservation Plan
MBTA	Migratory Bird Treaty Act
MMPA	Marine Mammal Protection Act
MND	mitigated negative declaration
MOA	memorandum of agreement
MOU	memorandum of understanding
MSA	Magnuson-Stevens Fishery Conservation and Management Act
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NMFS	National Marine Fisheries Service
NOI	Notice of Intent
NPDES	National Pollutant Discharge Elimination System
O&M	operations and maintenance
ORA	other regulatory authority
PA	Programmatic Agreement
PEIR	programmatic environmental impact report
PGP	Programmatic General Permit
PSAA	Programmatic Streambed Alteration Agreement
RGP	Regional General Permit
RHA	Rivers and Harbors Act

RMA	Routine Maintenance Agreement
RWQCB	Regional Water Quality Control Board
SAA	streambed alteration agreement
SHPO	State Historic Preservation Office
SLC	California State Lands Commission
SWPPP	Storm Water Pollution Prevention Plan
SWRCB	State Water Resources Control Board
USACE	U.S. Army Corps of Engineers
USFWS	U.S. Fish and Wildlife Service
WMBS	wetland mitigation banking system